

3, NEW

Aleks KURGVEL 578-54-6786
3602 16 St.N.W. Washington, D.C. 20010

3 May 1974

To New York State Tax Commission
Hearing Unit
P.O.Box 1311
Albany, New York 12201.

Your File # 2-29605604.

Hereby is forwarded my Petition for Redetermination and Refund
of Personal Income Tax for the years 1966 - 1972 in triplicate.

The grounds upon which redetermination and refund are claimed, are
listed on five (5) sheets attached to each of the three petitions (ori-
ginal and two copies).

Also are attached the four (4) inclosures (in triplicate) which
have been listed on sheet # 5 of the grounds for redetermination (point 4).

This letter and everything listed herein is being sent by registered
mail.

Respectfully,

Aleks Kurgvel
Aleks Kurgvel.

*Regist. Letter # 179261
Sent from Washington, D.C.
Return receipt received.
AK*

DECLASSIFIED AND RELEASED BY
CENTRAL INTELLIGENCE AGENCY
SOURCE METHOD EXEMPTION 3028
NAZI WAR CRIMES DISCLOSURE ACT
DATE 2008

IT-25 (5/73)

APPENDIX 7

FORM OF PETITION TO THE STATE TAX COMMISSION

STATE OF NEW YORK
STATE TAX COMMISSION

P.O. BOX 502S
Albany, N.Y. 12205

PETITION
FOR REDETERMINATION OF DEFICIENCY OR FOR REFUND OF
PERSONAL INCOME TAX OR UNINCORPORATED BUSINESS TAX
FOR THE YEAR(S) 1966 - 1969 and 1970-1972

Social Security No. 578-54-6786
or
Employer Identification No. _____

Taxpayer Aleks KURGVEL

Address 3602 16th Street N.W., Washington, D.C. 20010
(Same as on return - also, state present address if different)

Taxpayer's representative, if any _____

Address _____

(A taxpayer's representative cannot ordinarily be recognized unless a power of attorney is on file; see footnote at bottom of back of this form. If a power of attorney is attached, check this box. ☐)

STATE OF _____)
COUNTY OF _____) SS:

I (We), Aleks KURGVEL, the taxpayer(s)
or representative above named, being duly sworn, do hereby petition for redetermination of deficiency or for refund of tax paid, pursuant to section 689 of the New York State Tax Law, and in support of such application state as follows:

1. The tax in question is for the taxable year(s) or period(s) 1966-1969 and 1970-1972

2. The total amount of tax paid for each year or period is \$337.87 for 1966; \$399.37 for 1967; \$572.97 for 1968; \$548.54 for 1969; \$555.66 for 1970; \$ 611.42 for 1971; \$ 804.97 for 1972. Interests \$ 751.05. Penalty for 1972 \$217.34. SUM \$ 4,799.19.

3. Redetermination is requested of deficiency determined under date of December 2, 1977
in the amount of \$ 3,830.80 plus interests \$ 751.05 and penalty \$ 217.34, SUM \$ 4,799.19

OR

Refund of \$ _____ is requested. Notice of disallowance was dated _____

8/14 AND

Refund of \$ 4,799.19 is requested. No notice of disallowance has been received,
~~but claim for such refund was filed on or about~~ (see inclosures 3 & 4), 19 ____.

4. Each ground upon which redetermination of the deficiency or refund is claimed, and the facts relied upon to inform the State Tax Commission of the exact basis thereof, are as follows:
(Attach additional sheets if required.)

PLEASE SEE ON FIVE (5) ATTACHED SHEETS

5. No petition for redetermination of deficiency or for refund has heretofore been filed with the State Tax Commission in respect of any of the items hereinbefore stated, nor has any redetermination of deficiency or refund been previously granted thereon.

THIS FORM MUST BE
SIGNED AND NOTARIZED:

Aleks Kurgvel
(Signature of taxpayer or *representative)

Sworn to before me at
WASHINGTON D.C.
this 30th day of MAY

19 78

A. Leo Anderson

My Commission Expires February 14, 1979

NOTE: * If petition is signed by any person other than the taxpayer, it must be accompanied by a duly executed power of attorney unless either (1) a power of attorney has already been filed, or (2) the taxpayer is a minor whose return was filed by the person signing the petition or is mentally or physically incapable of signing.

A petition may be filed covering more than one taxable year only if the taxpayer has received a notice of deficiency or notice of disallowance of refund covering all years to which the petition relates.

Point 4 of Aleks KURGVEL's Petition Filed with the New York State
Tax Commission on 3 May 1974, concerning 1966-1972.

4a. My domicil of choice is in the District of Columbia where I have worked, maintained an adequate residence or home to meet my needs on continuous basis since my arrival in the United States of America in 1953, and where I have paid taxes ever since they were introduced. My prerogatives to choose a domicil emerges from consideration of the following:

(1) My domicil until 1940, both by birth and personal preference was the Republic of Estonia which was and remains forcefully annexed by communist Russia. During and immediately following WW II, I did not have a permanent abode either as the result of a soldiers' constant change of location during the war, or later as a displaced person awaiting opportunity to imigrate to another country where I could again establish a home for myself and my family. While a displaced person in various camps in Germany, I did not have a permanent abode, a steady job, or intent to settle. Consequently, my legal domicil remained unchanged.

(2) I arrived in this country over a year after my wife and two sons had immigrated to the United States in two separate and distinct units: my older son in September 1950 as recipient of a scholarship from the University of Clemson, Clemson, S.C., and my wife and minor son in 1952 who settled in New York as a job had been provided there for my wife. My immigration to this country was at the expense of the United States Government which employed me in my professional capacity at Munich, Germany since 1951 and then transferred me to a permanent position in Washington, D.C..

(3) On my entry into the United States at an aerial port in New York City, I proceeded to my pre-determined place of duty in Washington, D.C. to report on the first working day after my arrival. En route, while still in travel status, I had been authorized to spend the week-end with my wife and younger son in New York. My older son learned of my arrival several days later, by mail.

(4) Upon getting settled in my duties, I proceeded to search for a job for my wife and suitable quarters for her and our younger son in the Washington area. Unfortunately, I was unable to locate a job comparable to that then held by my wife in New York. Due to financial necessities arising from the fact that we had to rebuild our entire life, and to provide for old age within the few years remaining until forced retirement, we could not risk losing her income merely for the pleasure of again living together as a family unit.

(Continued) *AK*

Continuation, 2nd page of point 4 of Aleks KUNGVEL's petition filed with the New York State Tax Commission on 3 May 1974.

(5) As a person forced to flee his native country in order to save his life, I arrived in this country to accept a permanent position in Washington, D.C., The District of Columbia, therefore, became my first permanent residence since the beginning of WW II and constituted the location where I intended to establish my new home. As soon as eligible to become a citizen, I was naturalized by U.S. District Court in District of Columbia, my domicil of choice, on 13 May 1958. Court records will show my residence address to be in Washington, D.C.. Such orderly and realistically conceived action to re-establish a home and to provide for old age is not an "exigency of the moment" to an individual who has searched for more than ten years for an opportunity to resettle. Especially if one has taken full advantage of such opportunity for over twenty years.

(6) Although departing from my home in the District of Columbia on occasion for business and pleasure, I always intended to return here and, on numerous instances have remained here, although not so required for reasons of employment, in order to rest, conduct my private research, or to participate in social activities.

(7) My right to establish a domicil of choice within the District of Columbia is supported by precedent established in the leading American court case, Putnam v. Johnson (10 Mass. 493, 501 (1813) in which it emerged that domicil exists if there is no present intention of removing from the place. This decision is particularly binding as it was also upheld in Williamson v. Osenton (232 U.S. 619, 624, 34 S.Ct. 442, 58 L. Ed. 758 (1913)). The principle that domicil should, as far as possible, designate the place with which a person has a more substantial connection than any other was also expressed by Mr. Justice Frankfurter (306 U.S. 428-29, 59 S.Ct. 577) who, after referring to the extent to which intangibles constitute wealth and to the increasing mobility of men, said that the necessity for a single headquarters for all purposes, particularly for taxation, tends to be less and less useful fiction and is in danger of becoming a social anachronism (Texas v. Florida, 306 U.S. 398, 59 S.Ct. 563, 83 L. Ed. 817 (1939)). Likewise, the case of Newcombs' Estate, (192 N.Y. 238, 84 N.E. 950 (1908)) demonstrates that a person can choose between two places having equal claims with the one most contributing to livelihood gaining pre-eminence. As my livelihood has depended upon my full-time and permanent employment in the District of Columbia, my irregular visits to my property in New York State, where my wife and son happen to reside, are no more an indicator of domicil there than my equally infrequent visits to Lakewood, N.J. where my intended retirement home is located.

(Continued.)

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Continuation: 3rd page of point 4 of Aleks KUSNIEV's Petition filed with the New York State Tax Commission on 3 May 1974.

(8) My situation as an ex-refugee does not conform to normal American standards or situation. Thus, the character of the dwelling place, whether it is an apartment or but one room with or without a private bath, is of little consequence and is not in conflict with the American interpretation of Law although the latter was alluded during the hearing (pages 19-20 and 31-32 of the Transcript). This is clearly expressed in Stumberg's "Conflict of Laws", 2nd Ed.F.P., pages 30-31: The provision that "to acquire a domicile of choice, a person must establish a dwelling place with the intention of making it his home," ... with the intent to remain or to live at a particular place without regard to the character of the dwelling place, "coincides with the general purport of the American decisions,"....

(9) The permanence and adequacy of my home and domicile in Washington, D.C. also emerges from the following:

(a) I have remained at my present address in Washington, D.C. for over ten consecutive years.

(b) In addition to living and preparing two meals a day on the premises, although renting but one room, I have full privileges to use the facilities of the three-storied home. I have adequate facilities here to pursue my private research and to maintain my substantial research files consisting of over 15,000 documents in triplicate cross reference. That space is presently not available for me in my New York and New Jersey properties; not to mention the three and a half bathrooms for three people as contrasted to the one to be shared with several others at the other locations.

(c) I am a registered researcher with the National Archives in Washington at my District of Columbia address. Likewise, my extensive international and American correspondence emanates from, and is addressed to that home rather than to some other location.

b. Should there be further need to demonstrate that this claim for tax deficiencies is ill-advised, the following is submitted:

(1) If intended on grounds of the New York State Tax Commission decision of March 5, 1973, the cause is inapplicable for both reasons of different time frames and circumstances. This decision (inclosure 1) was merely based upon the hearing transcript (inclosure 2), unless the Commission violated own rules by failing to remit a copy of the Tax Bureau's brief to me; was based upon incomplete evidence

(Continued)

AK

Continuation: 4th page of point 4 of Aleks KUMCHEV's Petition filed with the New York State Tax Commission on 3 May 1974.

due to my ignorance of the Rules of Practice before the Commission of which no person in authority deemed proper to advise me before, during or after the hearing regardless of my obvious confusion and difficulty to understand the proceedings; and is therefore of questionable merit.

(2) A decision involving location of the matrimonial bed for purposes of establishing domicile is inapplicable considering that the domicile of a wife not separated from her husband because of his fault is with her husband (Williamson v. Osen-ton, 232 U.S. 619, 34 S.Ct.442, 58 L.Ed.758 (1914)). This is particularly applicable considering that I had permitted my spouse to relocate to another continent without any assurance that I could join her there at a later date. If any argument applies on this count, it should question whether the domicile of my wife is New York, or with me in Washington, D.C.

(3) The matter of the driving licence cited in the hearing transcript is no longer applicable as it was allowed to lapse.

(4) Until gaining the right to vote as a resident of Washington, D.C., I exercised my civic duty by voting in New York State on one occasion. Since, I have become a registered voter in the District of Columbia and have exercised that privilege. Consequently, that item loses relevance for determination of domicile for this time period and supports my election of the District of Columbia as my domicile of choice.

(4) The statement pertaining to "exigencies of the moment" (see page 32, lines 10-11 of the Transcript) have been dealt with, as has been the matter of bathrooms. In reference to the matter of beds, there were up to very recently only convertible divans in the house in New York, where I use the one in the living room on my visits, while my abode in Washington, D.C. is equipped with an old-fashioned, comfortable and full-sized bed.

c. Should all above legal precedent and factual information pertaining to my case not be of any avail and I be required to submit to double taxation, subject to review by the State Supreme Court, I further submit that:

(1) Delays generated by the State which preclude me from reclaiming taxes paid to the District of Columbia for the years where files have been closed, should be considered just reason for dropping deficiencies for those years.

(2) Interest assessments should be recomputed to commence not earlier than the date of the Commission's decision which was delayed exclusively at the pleasure of the State.

(Continued)

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Continuation: 5th page of point 4 of Aleks KURGVEL's Petition filed with the New York State Tax Commission on 3 May 1974.

(3) The penalty for 1972 should be dropped entirely: this appeal determines my liability for payment of taxes in New York State, rather than in the District of Columbia, for the years 1966-1972. Consequently, a penalty assessed on a decision not yet made can not be upheld.

(4) Consideration should be given to the human aspects and dignity of the individual involved. Obviously, a man who has deposited the full amount of the claim with the President of the Tax Commission is not attempting to evade a just claim. Likewise, I have discharged my duties as a citizen at another location in good faith. Considering my personal circumstances on arrival in this country, I feel that my achievements deserve respect rather than a penalty of this nature.

INCLOSURES: (Zerax copies)

1. Decision of N.Y. State Tax Commission of March 5, 1973, concerning Aleks and Salme Kurgvels' petition for redetermination of deficiencies for the years 1962-1965. 6 sheets.
2. Transcript of the hearing held on December 14, 1972 on the same matter as "inclosure # 1, 36 sheets.
3. Letter of Aleks KURGVEL of 24 March 1974 to the President of New York State Tax Commission, concerning the deficiencies 1966-1972, 3 sheets.
4. Letter of the President of the Tax Commission Mr. Mario A. Procaccino of April 5, 1974 to Aleks Kurgvel, the reply to the letter given as inclosure # 3. 2 sheets.

*Q. Leo Anderson
Notary Public
Washington D.C.
May 3rd 1974*

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My Commission Expires February 14, 1979